

Center for Medicaid and State Operations/Survey and Certification Group

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**DATE:** March 27, 2009

**TO:** State Survey Agency Directors

**FROM:** Director  
Survey and Certification Group

**SUBJECT:** Survey and Certification Issues Related to North Dakota Flooding  
**Memo revised to include Minnesota under public health emergency declaration**

**Memorandum Summary**

- **Situation:** Several States in the Midwest have been seriously impacted during this year's active flooding season. Citizens in North Dakota, South Dakota, and Minnesota are currently facing difficult circumstances as they respond to the flooding.
- **Emergency Declaration:** The President has declared a national emergency in specified counties in the State of North Dakota and Minnesota. Charles Johnson, the Acting Secretary of the U.S. Department of Health and Human Services, has also declared a public health emergency in the North Dakota and Minnesota geographic areas covered by the President's declaration.
- **Authority:** The Centers for Medicare & Medicaid Services (CMS) may waive or modify, to the extent necessary, certain requirements, or timetables if providers, acting in good faith to provide needed forms or services, are unable to comply with the requirements as a result of the effects of the disaster.

During the past week, the States of North Dakota, South Dakota, and Minnesota have quickly responded to protect their citizens as melting snow has caused flooding along the banks of the Red and Missouri Rivers. The National Oceanic and Atmospheric Administration reported the Red River had reached record stage in Fargo, and as a result, citizens across the river in Minnesota were also impacted by the flooding.

The health care providers of North Dakota and Minnesota have evacuated hundreds of patients and residents to safe locations, to ensure their safety and well-being. CMS fully supports the efforts of the many affected health care providers, as well as the numerous providers that are offering their assistance. We will take these emergency circumstances into account as we apply the Medicare and Medicaid standards that are designed to assure quality of care for all beneficiaries.

Charles Johnson, the U.S. Department of Health and Human Services Acting Secretary, has declared a public health emergency in affected counties in the States of North Dakota and Minnesota, which invokes time-limited statutory authority under section 1135(b) of the Social Security Act (SSA) to permit CMS and its agents to waive or modify certain requirements, or modify certain deadlines and timetables for the performance of required activities, but only to the extent necessary to ensure that sufficient health care items and services are available to meet the needs of the individuals enrolled in the Medicare, Medicaid and Children’s Health Insurance Program (CHIP), and to ensure that health care providers that furnish such items and services in good faith, but are unable to comply with one or more of these requirements, may be reimbursed and exempted from sanctions that might otherwise apply, absent any determination of fraud or abuse.

The waivers and modifications apply only to the health care providers and suppliers located in the “emergency area” (as defined in section 1135(g)(1) of the SSA) for which the Secretary has declared a public health emergency for an “emergency period,” and only to the extent that the provider in question has been affected by the disaster, or is treating evacuees.

Because of the need to use reasonable waiver discretion only to the extent necessary, the specific answers to provider questions will depend upon each unique circumstance. Health care providers should be sure to contact their State Survey Agency, who will contact their CMS Regional Office staff for a specific answer to each provider question.

### **CMS Emergency Websites**

To access more information about Midwest flooding emergency activities, including the North Dakota and Minnesota public health emergency declaration and the 1135 waiver, see the CMS Emergency Website at:

[http://www.cms.hhs.gov/Emergency/12\\_StormFlood.asp#TopOfPage](http://www.cms.hhs.gov/Emergency/12_StormFlood.asp#TopOfPage)

For more information regarding survey and certification emergency preparedness issues, including helpful resources and tools, and the North Dakota and Minnesota Flooding Emergency Provider Survey and Certification Questions and Answers, please see the Resource Page of the S&C Emergency Preparedness Website, which can be accessed at:

<http://www.cms.hhs.gov/SurveyCertEmergPrep/>.

/s/

Thomas E. Hamilton

cc: Survey and Certification Regional Office Management